Removal of Wildlife Information from a Forest Development Plan for Knight Inlet

Complaint Investigation 010317

Forest Practices Board

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The Investigation

In 2000, a member of the Sierra Club of British Columbia examined a forest development plan (FDP) that he had reviewed a year before during the public review and comment period. It was International Forest Products' (the licensee's) 1999-2003 FDP for Tree Farm Licence (TFL) 45 at the head of Knight Inlet, 175 kilometres northwest of Vancouver.

The FDP and its maps were different from what the member had reviewed in 1999. Information related to wildlife habitats and other biological resources had been removed from the FDP, apparently after the public review process was finished. Further inquiry indicated that information had been removed from the FDP at the direction of the Port McNeill Forest District manager before he approved the FDP. Also, the district manager had approved the FDP before comments about biological resources were received from the Ministry of Environment, Lands and Parks (MELP, now the Ministry of Water, Land and Air Protection).

The Sierra Club filed a complaint with the Forest Practices Board because it believed that:

- removing the information after the end of the public review and comment period reduced the value of public review of the FDP;
- the information that was removed had been known to the licensee and government for many years, so it was not appropriate for a district manager to require its removal;
- the FDP should not have been approved because several cutblocks were proposed within sensitive areas, as indicated by the removed information; and
- the district manager should have obtained comments from MELP before approving the FDP.

Background

The head of Knight Inlet has very rugged terrain, valuable timber and rich wildlife resources. Section 41 of the *Forest Practices Code of British Columbia Act* (the Act) states that a district manager cannot approve a licensee's FDP unless the district manager is satisfied that the FDP will adequately manage and conserve wildlife and other forest resources in the plan area.

For the purposes of depicting areas thought to be important to wildlife in the FDP, information about wildlife habitat for the head of Knight Inlet came from forest cover maps. Those maps showed potentially sensitive wildlife areas that had been inferred from air photos and field observations. However, those maps were not considered to be accurate enough for use in annual allowable cut decisions for TFL 45.

The licensee also had information about biological resources in its TFL management plan. That plan showed biological connectivity corridors across valley floors. In those corridors, forest cover might have to be retained for wildlife and other biological resources. The corridor locations were called forest ecosystem network (FEN) options. They were not based on field inventory. They could be, and were, shifted from time to time by mutual agreement between the licensee and government agencies to accommodate operational requirements.

In January 1999, the licensee and staff from the Ministry of Forests (MOF) and MELP met to discuss the content of a 1999-2003 forest development plan for TFL 45. An FDP does not have to be consistent with a TFL management plan. Nevertheless, the licensee said that the FDP would describe and map FEN options. It would also show possible winter habitats for mountain goat, deer and moose, possible summer habitats for mountain goats, and potential grizzly bears habitats. MOF staff pointed out that the Forest Practices Code did not require such information in the FDP. However, MOF asked the licensee to specifically mention in the FDP that it had used the most comprehensive and accurate information available.

The FEN options and wildlife habitat information were both included in the draft FDP that was made available for public review and comment in June 1999. The licensee chose to keep the information in the FDP because it was convenient for refining the licensee's wildlife inventory in the TFL. If harvesting was proposed over or near mapped wildlife habitat polygons, the standard practice was to carry out a field inspection. If wildlife use was confirmed, MELP would be consulted and the cutblocks could be altered in size and/or shape to meet wildlife needs.

The map legends in the FDP simply referred to "forest ecosystem networks," with no indication that the networks were draft or optional. However, the FDP text was clear that the FENs were only drafts and that no ungulate winter ranges had been designated under the Code. The licensee was using MELP information from years of field assessments to depict deer winter range, goat summer and winter range, and moose winter range.

MELP did not provide comments on the 1999-2003 FDP during the review and comment period. Near the end of the public review and comment period, Port McNeill Forest District staff sent comments on the draft FDP to the licensee. MOF stated that the FEN options and the wildlife habitats would not be approved as part of the FDP. The district did not recognize forest ecosystem networks. MOF recommended that such areas be removed from the FDP before the licensee submitted it to the district for approval.

Although MOF had twice recommended removal of the FEN and wildlife habitat information, the licensee decided not to remove it for three reasons. First, the mapped areas encouraged company personnel to ground-check for signs of wildlife use when they were in the field. Second, the licensee believed that the wildlife habitat information, even if imprecise, was the best available wildlife information. Third, the licensee wanted to be consistent. The licensee had included recreational resource information and visual quality objectives in the FDP even though, like wildlife areas, no formal visual quality objectives or recreation areas had been established under the Code in the plan area. The result was that FEN options and wildlife habitat polygons were still included in the FDP when it was submitted to the district manager for approval on September 3,

1999. However, the licensee asked the district manager not to consider the FENS and wildlife habitat polygons as part of the FDP.

District staff wrote to the licensee on September 17, 1999, noting that areas were still shown as winter habitat for mountain goats, moose and deer. MOF commended the licensee's intent but reminded the licensee that, although the Code included provisions for designation of ungulate winter ranges, no such areas had been formally designated anywhere in the TFL area. MOF again recommended that the licensee remove the wildlife habitat information from the FDP maps. The district manager had not formally rejected the FDP, but the licensee clearly understood that the FDP would probably not be approved unless the information was deleted.

By this time, the licensee's current FDP was nearing expiry. The licensee agreed to follow the district recommendation and sent revised FDP text to MOF the next day. Four paragraphs referring to the connectivity corridors and habitat areas were removed. The licensee did not want to pay for production of revised maps at that late date. Instead, the licensee suggested that MOF district staff simply strike out the connectivity corridors and habitats on their copy of the FDP maps. District staff added a hand-written legend to each map: "FENS, grizzly bears, moose, mtn. goat + deer winter/summer ranges have been deleted from the plan text + maps, as per licensee request."

District staff then advised the district manager that all reference to FENs and goat, deer, moose and grizzly summer and winter habitats had been removed from the FDP. The district manager was also told that the licensee had agreed to not include such information in future FDPs. The district manager approved the FDP two days later, on September 20, 1999. MOF did not receive MELP comments until September 29, six weeks after the end of the review and comment period. Therefore, the district manager did not consider MELP's written comments before he approved the FDP.

On September 30, MOF staff sent the licensee a list of expectations pertaining to the FDP. MOF acknowledged the licensee's efforts to address "non-forest resources" in the plan area, but instructed the licensee to not include FENs, draft FENs or potential wildlife habitats in future FDP submissions. Staff wrote that biological diversity requirements for the species of concern would all eventually be addressed by Code provisions for establishment of old-growth management areas, wildlife habitat areas and ungulate winter ranges. The licensee was again advised to not go beyond what was required by the legislation.

The complainant did not learn that the wildlife and connectivity information had been removed from the FDP until almost a year after the FDP had been approved. The complainant then filed the complaint with the Board.

The Board investigated whether the FDP content complied with the *Forest Practices Code of British Columbia Act* and regulations (the Code) and whether the district manager complied with the Code when he approved cutblocks over sensitive areas. Specifically, the investigation issues were:

1. Did the connectivity and habitat information have to remain in the FDP to meet Code requirements for content of an FDP and adequate public review and comment?
2. Did the district manager comply with the Code when he was satisfied that the FDP, with cutblocks over sensitive areas, adequately managed and conserved biological diversity and wildlife resources?

Discussion

1. Did the connectivity and habitat information have to remain in the FDP to meet Code requirements?

(a) FDP content requirements

The complainant questioned whether the FEN corridor and wildlife habitat information should have been included in the FDP because it had long been known to, and used by, resource agencies and the licensee, and was the best available information.

The Code has provisions for connectivity corridors and wildlife habitat concerns in FDPs. Section 18 of the *Operational Planning Regulation* (OPR) requires that a licensee include any such areas, but only if they are "known." The term "known" has a narrow definition. Information, however well known among resource agencies and licensees, does not become "known" under the Code unless it has been designated by government and made available to a licensee. In this case, no FENs or ungulate winter ranges had been designated within the area of the FDP. MELP's regional fish and wildlife manager and MOF's district manager had explicitly agreed in 1998 that those winter ranges did not meet policy conditions for designation as ungulate winter ranges. The Board finds that the licensee did not have to include the connectivity and habitat information in the FDP because it was not known information.

Section 9 of the Act also provides that an objective, specification or measure in a management plan can prevail over one established under the Code. The more stringent provisions prevail. In the context of this complaint, that could mean that the more stringent connectivity corridors and wildlife habitats used in the TFL management plan would prevail in the absence of those features in the FDP. However, the Board does not interpret either connectivity or wildlife habitat information as an objective, specification or measure. An "objective" is a goal; neither attribute is a goal. A "specification" is a detailed presentation, not a preliminary estimation. A "measure" is a management practice or step to be taken as a means to an end. On-site confirmation of actual wildlife use might qualify as a measure, but the depiction of potentially important areas does not. The Code provides for general wildlife measures, but they are defined as management practices (not map depictions) and can only be established jointly by MOF and MELP. The Board finds that

the licensee did not have to include the connectivity and habitat information in the FDP simply because it was specified in the TFL management plan.

Section 10 of the Act requires that an FDP specify measures that will be carried out to protect forest resources, which could include biological diversity and wildlife habitats. The Forest Appeals Commission has restricted the definition of forest resources for purposes of section 10 to exclude general wildlife habitat information. Mountain goats and grizzly bears are identified wildlife in the plan area, recognized as susceptible to effects of forest practices. There are habitat protection measures specified for those species, but those measures are only to be applied within designated wildlife habitat areas. No such areas had been designated in the plan area. The Board finds that the licensee did not have to include the connectivity and habitat information as measures to protect forest resources to comply with section 10.

Section 5 of the OPR requires the licensee to use the most comprehensive and accurate information in an FDP. However, that requirement only applies to categories of information that must be included in an FDP, and there is no requirement in the Code to include FEN or wildlife habitat information unless it is "known information." Known information has to be formally made known, and this had never happened for FENs or wildlife habitat in TFL 45. Therefore, the licensee did not have to include it in the FDP.

The complainant also questioned whether it was appropriate for a district manager to threaten to reject an FDP because it contained more information than was specified as content requirements in the Code. The complainant believed that the district manager had used the Code to reduce environmental protection that was in place before the Code came into effect, and that this was contrary to the purpose of the Code. The district manager maintains that he did not want the information removed to reduce environmental protection. He wanted it removed because he believed that the additional information might have misled the public into believing that wildlife habitats and draft connectivity areas had some form of formal protection. The Board found no indication of intent to reduce environmental protection and accepts the district manager's explanation. The areas were not formally protected, and removing the information from the plan did not affect their status.

In summary, there was no Code requirement to include the connectivity and habitat information in the FDP.

(b) Public review and comment requirements

The complainant believed that the district manager, by requiring removal of information from the FDP after public review, fundamentally changed the plan. The public had reviewed something quite different from what was considered for approval. The complainant questioned whether that complied with Code requirements for public review and comment.

Section 39 of the Act, with section 27 of the OPR, requires that a licensee make a copy of the FDP available to the public for review and comment. The licensee did so for the required period. The Board finds that the licensee complied with the requirements of the Code for public review.

However, section 27(8) of the OPR also places a requirement on the district manager. The district manager must believe that the review opportunity is adequate. The complainant said that it was not adequate because removal of the information after the review impaired the public review process, and initial inclusion of the information misled the public into believing the connectivity and wildlife habitat areas were protected

The document that was made available for public review was different from what the district manager considered for approval. There was no change to cutblock and road proposals, but the FDP reviewed by the public included a commitment by the licensee to review, with MELP, areas where proposed harvesting appeared to affect suspected wildlife ranges. If actual wildlife use was observed, cutblocks would be altered in size or shape, or possibly deleted, to ensure compatibility with wildlife needs.

The public reviewed an FDP that included maps with FENs and general wildlife habitats. Those networks and habitats were marked as "deleted" when the district manager considered FDP approval. The complainant was concerned that the public was misled into thinking those areas were protected. The district manager was also concerned that the mapped network and habitat areas would impair public review by causing reviewers to incorrectly assume that wildlife ranges had some form of protection. That was why the district manager wanted the information removed from the FDP. However, having the network and habitat information in the FDP may also have enhanced public review. The maps showed six proposed cutblocks in suspected wildlife ranges. That would focus attention on locations of potential resource conflicts. Overall, the Board finds that the effect on public review was not substantial enough to make public review inadequate.

2. Did the district manager comply with the Code when he was satisfied that the FDP, with cutblocks over sensitive areas, adequately managed and conserved biological diversity and wildlife resources?

Under section 41 of the Act, the district manager has to be satisfied that an FDP will adequately manage and conserve forest resources. The complainant believed that the district manager had disregarded the deleted connectivity and habitat information when he considered whether to approve the FDP. The complainant questioned how the district manager could have satisfied himself that the FDP adequately managed and conserved biological diversity and wildlife without such information.

The district manager said he considered the information, even though it had been deleted from the FDP. There is no indication of what factors were considered in the district manager's brief approval letter. It gave no detailed rationale for the approval and no indication of how, or whether, connectivity and habitat information had been considered. However, on September 10, 1999, the district manager's staff who reviewed the FDP made him aware that some proposed cutblocks overlapped suspected deer and goat winter ranges, and expressed concerns about the FDP. In addition, the connectivity and habitat information had not actually been erased from the maps. A notation about deletion had been added, but the maps still showed proposed cutblocks overlapping suspected wildlife habitats. Overall, the Board finds that the district manager did consider the connectivity and habitat information that had been included in the draft FDP.

However, the connectivity and wildlife information provided in the draft FDP was not necessarily enough to determine whether biological diversity and wildlife habitat resources would be adequately managed and conserved. The Board considered whether it was appropriate, in the circumstances of this complaint, for the district manager to approve cutblocks over those sensitive areas.

The circumstances can be summarized as follows:

MELP initially expressed concerns about wildlife habitat protection in an FDP-planning meeting in January 1999. MOF was present, and so was aware that there were connectivity and habitat concerns in the plan area. The licensee pointed out that some cutblocks were proposed over some of the depicted connectivity corridors when it subsequently sent the first draft FDP to MELP for review in late June. However, the licensee also suggested a way to deal with connectivity and habitat concerns. It proposed that any potential conflicts be resolved on site. If actual wildlife use was observed, the licensee promised to alter the size or shape of the cutblock as required to ensure compatibility with wildlife needs. The licensee asked MELP to submit any comments to it by August 16, 1999. On September 1, the licensee submitted the FDP to MOF for approval, and noted that MELP had not submitted written comments. MELP also had not indicated that any comments were coming.

The district manager approved the FDP on September 20, 1999. MELP comments were not received at the MOF office until September 29, six weeks after the 60-day review period had ended and more than a week after the FDP had been approved. MELP asked that the connectivity and habitat areas be considered as potentially unavailable for harvest. MELP staff also provided comments on specific blocks, with concerns about encroachment on mapped potential grizzly bear, mountain goat and deer habitats. MELP recommended non-approval of 13 blocks on this basis. All 13 blocks had been approved by the time these comments were received.

Although MELP provided its concerns too late, the district manager was aware that Knight Inlet had important wildlife resources. He knew that MELP had carried out aerial inventories of wintering mountain goat populations in Knight Inlet in the past. He knew that, in previous years, the licensee and MELP had discussed concerns about impacts of timber harvesting on wildlife habitat. The district manager could have called or written MELP to ask about wildlife concerns, even though MELP had not commented to the licensee. On the other hand, the district manager had some basis to believe that most of MELP's concerns had been dealt with. MELP had not indicated major concerns at a preliminary meeting in January 1999, and had not asked for an extension to make late comments.

The Board also considered whether MELP staff, knowing that their comments would be late, should have advised the licensee or MOF to await their comments. MELP did, belatedly, object to the approval of 13 cutblocks. If they wanted their objections considered, MELP staff should have advised that late comments were coming. The Board considers that MOF and MELP did not engage in an appropriate level of consultation prior to FDP approval. There was no legal requirement to do so, but MELP should have provided comments on time to the district manager, or advised the district manager that comments would be forthcoming.

The Board considered whether the district manager had enough information to be satisfied that biological diversity and wildlife habitats would be adequately managed and conserved if he approved the cutblocks over sensitive areas. At the time of the FDP approval, the district manager:

- knew that there were potential connectivity and wildlife concerns in the FDP area;
- had an indication that some cutblocks overlapped areas of concern;
- knew that the licensee and MELP had a working practice of addressing conflicts on site;
- was aware that MELP had not provided any comments on the FDP; and
- knew that it would be difficult to rescind approval of the cutblocks unless the licensee agreed to that.

In those circumstances, the Board finds that approval was not appropriate. Habitat overlaps shown on the FDP maps indicated to the district manager that there were some potential resource management and conservation problems associated with approving some cutblocks. The final FDP included no commitments by the licensee to deal with such problems, such as to conduct joint field reviews with MELP or even to send site-specific operational plans such as silviculture prescriptions to MELP. He approved the FDP without conditions, trusting that the licensee and MELP could resolve any problems on the ground. He did not prepare a written rationale to explain how he decided that biological diversity and habitat resources would be adequately managed and conserved.

In the Board's view, it is not appropriate for a district manager to rely on the licensee's intent to work things out in the field. An FDP must stand on its own and include sufficient information about how impacts on resource values will be dealt with. The district manager could have approved the FDP subject to conditions. For example, where proposed harvesting appeared to affect suspected wildlife ranges, the licensee could have been required to review them in the field with MELP and adjust the size or shape of cutblocks, or delete them as required to ensure that critical habitat is not impinged upon. Alternatively, the district manager could have provided a written rationale to explain how he satisfied himself that the connectivity and habitat concerns would be dealt with.

With no explicit commitment in the FDP, no conditions on the FDP approval and no written rationale to explain how the district manager was satisfied, the Board concludes that it was not reasonable for the district manager approve the FDP. The Board finds that the district manager did not comply with section 41(1)(b) of the Code because he could not have reasonably satisfied himself that the FDP would adequately manage and conserve biological diversity and suspected wildlife habitat values.

Conclusions

1. The draft connectivity and habitat information did not have to remain in the FDP because there was no Code requirement to include it. The licensee complied with Code requirements in the preparation of the FDP.

2. The district manager approved the FDP without conditions and without a written rationale explaining how he was satisfied that potential conflicts between proposed cutblocks and biological diversity and wildlife habitats would be resolved. The district manager relied on an intention by the licensee to review contentious cutblocks in the field with MELP and adjust or delete cutblocks as required to resolve conflicts. Such an intention is not enforceable, and therefore not adequate to protect the public interest in sound forest management. The district manager should have ensured that the FDP approval created enforceable commitments to resolve potential conflicts. Without such assurance, he did not comply with the Code requirement to reasonably satisfy himself that the plan would adequately manage and conserve resource values.

3. Although there was no Code requirement to do so, MELP should have made more effort to communicate its comments to MOF when FDP approval was being considered. Timely and cooperative communication between the resource agencies about the connectivity and habitat values in the plan area would have improved forest management.

Commentary

After MELP's comments were received, MELP and the licensee agreed to do joint field checks on the controversial blocks before logging took place. Thus, removal of the draft connectivity and wildlife habitat information from the FDP did not create problems on the ground. However, a potentially serious planning problem developed. After the FDP was approved, district MOF staff instructed the licensee, in writing, to not include FENs, draft FENs or potential wildlife habitats in future FDP submissions. The effect was that licensees in the district were forbidden from including any information in FDPs beyond what was explicitly required by the Code. That, in the Board's view, is contrary to sound forest management. Even if forest resource information has not been field-verified or is only an educated guess by an agency or licensee, it is the best available information and therefore useful to the public and resource agencies if it is included in operational plan maps. The complainant identified a significant problem.

In response to this investigation, the district manager sent a letter to all licensees in the district in early January 2002. The letter states that information beyond what is required by the Code, such as potential wildlife habitats, can be shown and described in FDPs. The district manager insists that such information be identified in a way that makes its imprecise nature clear. The Board feels this resolves the issues raised in this complaint about content of FDPs.

The Board notes that cooperation and communication between the resource agencies at the district level has also improved since 1999. In a recent meeting about ungulate winter ranges in portions of TFL 45, the licensee, MOF, and Ministry of Water, Land and Air Protection staff discussed expectations for agency and licensee staff to work together and communicate effectively.